

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RANDAL RUIZ,
CDC# V-00678,

Plaintiff,

vs.

Cpt ESQUIBEL,

Defendant.

Civil No. 06-CV-1270 JM (RBB)

ORDER:

(1) DISMISSING CASE WITHOUT PREJUDICE FOR FAILING TO PAY FILING FEES PURSUANT TO 28 U.S.C. § 1914(a) AND/OR MOVE TO PROCEED *IN FORMA PAUPERIS* PURSUANT TO 28 U.S.C. § 1915(a); and

(2) DISMISSING COMPLAINT AS DUPLICATIVE PURSUANT TO 28 U.S.C. § 1915A(b)(1)

Randal Ruiz (“Plaintiff”), a state prisoner currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. This case has been referred to the Honorable Ruben B. Brooks, Magistrate Judge, pursuant to Local Rule 72.3, “Assignment of § 1983 Prisoner Civil Cases to United States Magistrate Judges” and 28 U.S.C. § 636(b)(1).

I. Failure to Pay Filing Fee or Request IFP Status

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of

1 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if
 2 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).
 3 *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Here, Plaintiff has neither prepaid
 4 the \$350 filing fee required to commence this action, nor has he submitted a Motion to Proceed
 5 IFP. Therefore, this action is subject to immediate dismissal pursuant to 28 U.S.C. § 1914(a).

6 **II. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

7 The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A, obligates the Court to
 8 review complaints filed by anyone "incarcerated or detained in any facility who is accused of,
 9 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
 10 of parole, probation, pretrial release, or diversionary program," "as soon as practicable after
 11 docketing" and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.
 12 *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any
 13 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may
 14 be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

15 Plaintiff's instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.
 16 § 1915A(b)(1) because it appears to be duplicative of a civil rights action he is already litigating.
 17 Plaintiff's Complaint contains identical claims that are found in *Ruiz v. Equibel*, S.D. Cal. Civil
 18 Case No. 06-1191 JM (AJB). A court "may take notice of proceedings in other courts, both
 19 within and without the federal judicial system, if those proceedings have a direct relation to
 20 matters at issue." *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*,
 21 971 F.2d 244, 248 (9th Cir. 1992).

22 A prisoner's complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it
 23 "merely repeats pending or previously litigated claims." *Cato v. United States*, 70 F.3d 1103,
 24 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal
 25 quotations omitted). Because Plaintiff is already litigating the same claims presented in the
 26 instant action in *Ruiz v. Esquibel*, S.D. Cal. Civil Case No. 06-1191 JM (RBB), the Court hereby
 27 **DISMISSES** Civil Case No. 06cv1270 JM (RBB) pursuant to 28 U.S.C. § 1915A(b)(1). *See*
 28 *Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

1 **III. Conclusion and Order**

2 For the reasons set forth above, the Court hereby:

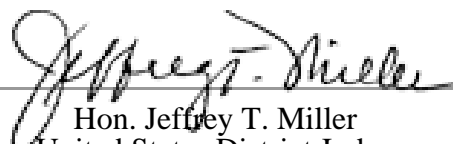
3 1. **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
4 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

5 2. **DISMISSES** Plaintiff's Complaint in Civil Case No. 06cv1270 JM (RBB) as frivolous
6 pursuant to 28 U.S.C. § 1915A(b)(1).

7 The Clerk shall close the file.

8 **IT IS SO ORDERED.**

9 DATED: September 22, 2006

10 
11 Hon. Jeffrey T. Miller
United States District Judge